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SECRETARY OF STATE**

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CHAPTER 246

SENATE BILL 1087

AN ACT

AMENDING SECTIONS 25-551 AND 42-1122, ARIZONA REVISED STATUTES; RELATING TO
SPOUSAL MAINTENANCE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 25-551, Arizona Revised Statutes, is amended to
3 read:

4 25-551. Clerk of the court

5 The clerk of the court may provide services to assist a person to
6 collect spousal maintenance. These services may include providing
7 information regarding collection and enforcement procedures, INTERCEPTING A
8 TAXPAYER'S STATE INCOME TAX REFUND FOR COLLECTION PURPOSES, providing
9 assistance in the preparation of forms and instructions necessary to initiate
10 an enforcement action and providing information and referrals regarding
11 services related to spousal maintenance and debt collection and enforcement.

12 Sec. 2. Section 42-1122, Arizona Revised Statutes, is amended to read:

13 42-1122. Setoff for debts to state agencies and courts;
14 revolving fund; definitions

15 A. The department shall establish a liability setoff program by which
16 refunds under sections 42-1118 and 43-1072 may be used to satisfy debts which
17 the taxpayer owes this state or a court. The program shall comply with the
18 standards and requirements prescribed by this section.

19 B. If a taxpayer owes an agency or court a debt, the agency or court,
20 by November 1 of each year, may notify the department, furnishing at least
21 the state agency, court or program identifier, the first name, last name,
22 middle initial and social security number of the debtor, and the amount of
23 the debt.

24 C. The department shall match the information submitted by the agency
25 or court with taxpayers who qualify for refunds under section 42-1118 and:

26 1. Notify the agency or court of a potential match, the taxpayer's
27 home address and any additional taxpayer identification numbers used by the
28 taxpayer. Even if the taxpayer is not entitled to a refund, the department
29 of revenue shall provide to:

30 (a) The court, the clerk of the court and the department of economic
31 security, for child support and spousal maintenance purposes only, the home
32 address of a taxpayer whose debt for overdue support is referred for setoff
33 and any additional taxpayer identification numbers used by the taxpayer.

34 (b) The court, the home address and any additional taxpayer
35 identification numbers used by the taxpayer whose debt for a court obligation
36 is referred for setoff and who is identified by the court as a probationer on
37 absconder status.

38 2. Request final agency or court confirmation within ten days of the
39 match and of the continuation of the debt. If the agency or court fails to
40 provide confirmation within forty-five days after the request, the department
41 shall release the refund to the taxpayer.

42 D. An agency or court may submit updated information, additions,
43 deletions and other changes on a quarterly or more frequent basis, at the
44 convenience of the agency or court.

1 E. On confirmation pursuant to subsection C, paragraph 2 of this
2 section, the agency shall notify the taxpayer, by mail to the most recent
3 address provided by the taxpayer to the department, of the intention to set
4 off the debt against the refund due and of the taxpayer's right to appeal to
5 the appropriate court, or to request a review by the agency pursuant to
6 agency rule, within thirty days of the mailing of the notice. The basis for
7 a request for review shall not include the validity of the claim if its
8 validity has been established at an agency hearing, by judicial review in a
9 court of competent jurisdiction in this or any other state or by final
10 administrative decision and shall state with specificity why the taxpayer
11 claims the obligation does not exist or why the amount of the obligation is
12 incorrect. If the setoff accounts for only a portion of the refund due, the
13 remainder of the refund shall be sent to the taxpayer.

14 F. If, within thirty days of the mailing of the notice, the taxpayer
15 requests a review by the agency or provides the agency with proof that an
16 appeal has been taken to the appropriate court, the agency shall immediately
17 notify the department and the setoff procedure shall be stayed pending
18 resolution of the review or appeal.

19 G. If the department does not receive notice of a timely appeal, it
20 shall draw and deliver a warrant in the amount of the available refund up to
21 the amount of the debt in favor of the agency and notify the taxpayer of the
22 action by mail.

23 H. Subsections E, F and G of this section do not apply to a debt
24 imposed by a court. A court shall not use this section to satisfy a judgment
25 or payment of a fine or civil penalty until the judgment has become final or
26 until the time to appeal the imposition of a fine or civil penalty has
27 expired.

28 I. A revolving fund is established to recover and pay the cost of
29 operating the setoff program under this section. The department may
30 prescribe a fee to be collected from each agency or court utilizing the
31 setoff procedure or from the taxpayer, and the amount shall be deposited in
32 the fund. The amount of the fee shall reasonably reflect the actual cost of
33 the service provided. Monies in the revolving fund are subject to
34 legislative appropriation.

35 J. If agencies or courts have two or more delinquent accounts for the
36 same taxpayer, the refund may be apportioned among them pursuant to rules
37 prescribed by the department of revenue, except that a setoff to the
38 department of economic security for overdue support has priority over all
39 other setoffs.

40 K. If the refund is insufficient to satisfy the entire debt, the
41 remainder of the debt may be collected by the agency or court as provided by
42 law or resubmitted for setoff against subsequent refunds.

43 L. In the case of a refund that is intercepted in error under this
44 section, the taxpayer shall be reimbursed by the agency or court with
45 interest pursuant to section 42-1123.

1 M. Except as is reasonably necessary to accomplish the purposes of
2 this section, the department shall not disclose under this section any
3 information in violation of chapter 2, article 1 of this title.

4 N. An agency or court shall not enter INTO an agreement with a debtor
5 for:

6 1. The assignment of any prospective refund to the agency or court in
7 satisfaction of the debt.

8 2. Payment of the debt if the debt has been confirmed to the
9 department for setoff under subsection C, paragraph 2 of this section.

10 O. If a tax refund is based on a joint income tax return and the
11 department of economic security receives a written claim from the
12 nonobligated spouse within forty-five days after the notice of a setoff for
13 overdue child support, the setoff only applies to that portion of the refund
14 due to the obligor. The nonobligated spouse shall provide to the department
15 of economic security copies of both the obligated and nonobligated spouse's
16 federal W-2 forms and evidence of estimated tax payments supporting the
17 proportionate share of each spouse's payment of tax. The department of
18 economic security shall retain the amount of the set off refund due to the
19 obligated spouse determined by a proration based on the tax payments of each
20 spouse by estimated tax payment or tax withheld from wages.

21 P. For the purposes of this section:

22 1. "Agency" means a department, agency, board, commission or
23 institution of this state. Agency also means a corporation that is under
24 contract with this state and that provides a service that would otherwise be
25 provided by a department, agency, board, commission or institution of this
26 state, if the contract specifically authorizes participation in the liability
27 setoff program and the attorney general's office has reviewed the contract
28 and approves such authorization. The participation in the liability setoff
29 program shall be limited to debt related to the services the corporation
30 provides for or on behalf of this state.

31 2. "Court" means all courts of record, justice courts, municipal
32 courts and police courts.

33 3. "Debt" means an amount over fifty dollars owed to an agency or
34 court by a taxpayer and may include a judgment in favor of this state or a
35 political subdivision of this state, interest, penalties, charges, costs,
36 fees, fines, civil penalties, surcharges, assessments, administrative charges
37 or any other amount. Debt also includes monies owed by a taxpayer for
38 overdue support and referred to the department of economic security OR THE
39 CLERK OF THE COURT for collection.

40 4. "Overdue support" means a delinquency in court ordered payments for
41 spousal maintenance or support of a child or for spousal maintenance to the
42 parent with whom the child is living if child support is also being enforced
43 pursuant to an assignment or application filed under 42 United States Code
44 section 654(6) or other applicable law.